

**JOINT LEGISLATIVE SUNSET  
REVIEW COMMITTEE FINDINGS AND  
RECOMMENDATIONS**

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**Review and Evaluation of the  
Board of Psychology**

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**Report to the  
Department of Consumer Affairs**

**APRIL, 1998**

# **JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE**

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# IDENTIFIED ISSUES, RECOMMENDATIONS, AND FINAL ACTION OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REGARDING THE BOARD OF PSYCHOLOGY

## **ISSUE #1. Should the State's licensing of psychologists be continued?**

**Recommendation:** *Both the Department and Committee staff recommended the continued licensure of psychologists.*

**Vote:** *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

**Comment:** Psychologists are licensed in all 50 states, Guam, the U.S. Virgin Islands and all Canadian Provinces. The potential for harm to consumers in this profession is great. Psychological services involve a highly intimate process in which patients discuss very personal feelings and details of their lives with a licensed psychologist, in an attempt to resolve severe conflicts from the past, deal with highly traumatic incidents, and develop new patterns of behavior to live their lives more effectively. These patients are highly vulnerable and many are seeking therapy to deal with prior incidences of sexual abuse and rape. It cannot be forgotten, that the processes involved in psychological services are bound by strict tenets of confidentiality and the psychological services are, therefore, provided behind closed and sometimes locked doors.

Many of the complaints received by the Board of Psychology involve allegations of sexual misconduct, or other improprieties of personal conduct with a patient. The Board noted that, "Three national surveys of psychologists reported a range of explicit sexual contact between male therapists and female patients from 9.4 percent to 12.1 percent." Sexual misconduct cases comprise the most egregious of final decisions issued by the board's enforcement program.

## **ISSUE #2. Should the regulation of registered psychologists and psychological assistants by the Board of Psychology be continued?**

**Recommendation:** *Both the Department and Committee staff recommended the continued*

*regulation of registered psychologists and psychological assistants.*

**Vote:** *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

**Comment:** The Board of Psychology also regulates *registered psychologists* and *psychological assistants*, whose qualifications and practice settings are somewhat different from those of licensed psychologists, as discussed below. With respect to these other practitioners who are regulated by the Board, the sensitivity and potential for client harm is substantially equivalent.

*Registered Psychologists* must be employed at a non-profit community agency that receives a minimum of 25 percent of its funding from some governmental source. Registered psychologists are registered directly to the qualifying agency and typically work under the supervision of a licensed psychologist.

*Registered Psychological Assistants* must be supervised by a licensed psychologist or board-certified psychiatrist who is rendering professional services in the same work setting and at the same time as the psychological assistant is rendering professional services.

### **ISSUE #3. Should an independent Board of Psychology be continued, or should its operations and functions be assumed by the Department of Consumer Affairs?**

**Recommendation:** *Both the Department and Committee staff recommended that the Board of Psychology be retained as the independent state agency to license and regulate psychologists. Committee staff recommended that the sunset date of the Board of Psychology be extended for six years (to July 1, 2005). However, the Legislature should continue to monitor the Board's enforcement and oral examination programs.*

**Vote:** *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

**Comment:** The Board of Psychology appears, in most respects, to be operating efficiently and carrying out its mandate for public protection effectively. However, since allegations have been raised (albeit by a small number of practitioners who have been disciplined by the board) regarding the Board's enforcement activities, as well as its oral examination, the Legislature should continue to monitor these two aspects of the Board's program. (See further discussion of the Board's examination and enforcement programs within this document.)

With over 15,000 licensed psychologists, psychological assistants, and registered psychologists, California is the largest psychology licensing board in the world. There appears to be little, if any, potential for cost savings or program improvement by transferring the Board of Psychology program to the Department of Consumer Affairs.

While many other states have conducted sunset reviews of their psychology boards, including Texas, Florida, Alaska, Colorado, Kansas and New York, all have chosen to maintain or implement regulation through an independent doctoral level psychology board. By comparison, California is considered the most effective and innovative psychology board in North America by the Association of State and Provincial Psychology Boards.

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**ISSUE #4. Should the size or composition of the Board of Psychology be changed?**

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**Recommendation:** *This Board has 8 members, of which 5 are licensed psychologists and 3 are public members. The Department generally recommends a public member majority and an odd number of members for regulatory boards. For the Board of Psychology, the Department recommended an increase in public membership to improve balance consistent with those guidelines. Committee staff concurred with the Department, and recommends adding one more public member to the Board. The composition of the Board would be 9 members, with 5 licensed psychologists and 4 public members.*

**Vote:** *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

**Comment:** The eight-member Board of Psychology is a mix of licensed and public members. Under current law, the Governor appoints five licensed psychologists and one public member, while one of the remaining public members is appointed by the Senate Rules Committee and the other by the Speaker of the Assembly.

It should be noted, that the Board has an even number of members, unusual among boards within the Department of Consumer Affairs. Having an even number of members on a regulatory board can pose difficulties when there is division among the members on a particular issue, as there is no method of breaking a tie vote. Additionally, the expertise needed to develop and validate examinations and set enforcement policy is vested in the board, and this translates into being extremely time consuming and demanding on the licensed members. For these reasons, the Board has recommended the membership be increased to nine. Both the Department and Committee staff concur in this recommendation.

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**ISSUE #5. Should the Legislature permit the Board of Psychology to enact, through regulation, standards of ethical conduct relating to the practice of psychology, as recommended by the Board?**

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**Recommendation:** *The Department did not address this issue. Committee staff recommended that the Board of Psychology be statutorily authorized to enact standards of ethical conduct as adopted and published by the American Psychological Association. Such standards shall be applied by the Board, as the accepted standard of care in all licensing examination development and in all Board enforcement policies and disciplinary case evaluations.*

**Vote:** *The Joint Committee adopted the recommendation of the Board and Committee staff by a vote of 6-0.*

**Comment:** According to the Board of Psychology, a previous attempt was made to enact through the regulatory process a code of conduct for licensees. It was rejected by the Office of Administrative Law. Although the board is considering reinstituting the process of promulgating regulations, it would not be unprecedented for the Legislature to enact a statute to allow for standards of ethical conduct to be adopted. Most recently, in 1997, such standards were enacted with respect to architects.

**ISSUE #6. Should the statutory provisions relating to social/sexual relationships of psychologists with former patients be clarified, as recommended by the Board of Psychology?**

**Recommendation:** *The Department did not address this issue. Committee staff recommended that Legislature should consider clarifying the statutory provisions related to situations where a psychologist has a social/sexual relationship with a (former) patient, as recommended by the Board.*

**Vote:** *The Joint Committee adopted the recommendation of the Board and Committee staff by a vote of 6-0.*

**Comment:** The Legislature has enacted stringent penalties in response to the high incidence of reported problems with therapists (psychologists and other licensed therapists), who engage in social/sexual relationships with patients or former patients,. For example, SB 2039 (McCorquodale, 1994) provided for mandatory license revocation in cases where there was a finding that the respondent (therapist) had engaged in sexual relations with a patient, or former patient under described circumstances. Moreover, administrative law judges were precluded from staying a revocation order under such circumstances. In 1997, the Governor vetoed SB 1212 (Vasconcellos) that would have prevented specified boards from rejecting (non-adopting) an administrative law judge's decision, if the accusation had not been proven to a clear and convincing standard.

The Board of Psychology, and other health care regulatory boards, have come under considerable criticism from practitioners (many of whom have been subject to the disciplinary process) who contend that the board(s) have abused their discretion and pursued disciplinary actions with unwarranted and excessive vigor. The Board of Psychology adamantly refutes these contentions. While there have been instances where the Board's decision has been reviewed by the courts and remanded back to the Board, the Joint Committee staff is not aware of any cases where a Board decision has been reversed.

In an effort, however, to clarify current law for the benefit of practitioners and enforcement entities, the Board has offered the following language to amend B&P Code Section 2960(o).

This language would at least place a time frame on when it would be unprofessional conduct to engage in sexual relations with a former patient.

*“Any act of sexual abuse or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct which is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant or registered psychologist.”*

Likewise, the Board offers the following language to amend B&P Code Section 2960.1, to clarify what circumstances trigger disciplinary action with respect to a psychologist who has a sexual relationship with a patient or former patient, and to specify license revocation as the appropriate disciplinary action under such circumstances:

*“Notwithstanding Section 2960, any Proposed Decision or Decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section ~~729~~ 728, when that act is with a patient, or with a former patient ~~when the relationship was terminated primarily for the purpose of engaging in that act~~, within two years following termination of therapy shall contain an order of revocation. The revocation shall not be stayed by the Administrative Law Judge.”*

#### **ISSUE #7. Should “incompetence” be included as grounds for disciplinary action as recommended by the Board of Psychology?**

**Recommendation:** *Both the Department and Committee staff recommended that “incompetence” be added as a separate cause for disciplinary action.*

**Vote:** *The Joint Committee adopted the recommendation of the Board, Department and Committee staff by a vote of 6-0.*

**Comment:** “Incompetence” as a separate cause for disciplinary action is included along with “negligence” in almost every statute pertaining to health care practitioners. It is an appropriate addition to the law which pertains to acts which would constitute unprofessional conduct by a psychologist in their practice.

#### **ISSUE #8. Should a felony conviction and resulting incarceration trigger immediate suspension of a license, as recommended by the Board of Psychology?**

**Recommendation:** *The Department did not address this issue. Committee staff concurred with the recommendation of the Board to amend the B&P Code to provide for automatic/immediate suspension of a license any time a licensee is incarcerated after conviction of a felony.*

**Vote:** *The Joint Committee adopted the recommendation of the Board and Committee staff by a vote of 6-0.*

**Comment:** There is precedent for this recommendation in B&P Code Section 2236.1, which confers this authority on the Medical Board of California with respect to its licensees.

**ISSUE #9. Should licensed psychologists be required to display in their principle place of business a notice to consumers of who they can contact if they have any questions or complaints regarding the licensee, as recommended by the Board of Psychology?**

**Recommendation:** *The Department did not address this issue. Committee staff concurred with the recommendation of the Board to require licensed psychologists to display their licenses or registrations in the locality they are working with patients, and to notify them who they can contact if they have any questions or complaints regarding the licensee.*

**Vote:** *The Joint Committee adopted the recommendation of the Board and Committee staff by a vote of 6-0.*

**Comment:** While the feasibility and logistics of license display, or provision of related consumer information, may vary with the practice setting of the licensee (for example, a private office versus a large mental health facility), it is imperative that consumers know that a practitioner is licensed/regulated by a state agency and how to contact that agency in the event of a problem.

**ISSUE #10. Should the oral examination required by the Board of Psychology be eliminated?**

**Recommendation:** *Both the Department and Committee staff recommended continuation of the use of the oral exam by the Board of Psychology.*

**Vote:** *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

**Comment:** The Board's oral examination has been the subject of harsh criticism, generally from candidates who have failed the exam. They allege that the examination (and any oral examination) is inherently subjective in both content and administration, and that it does not reflect or measure their professional preparation and experience adequately. They also argue



that the low pass rate (fairly consistently in the middle-40 percent range over the last few years, but lower than in previous years) conclusively demonstrates that the oral examination is not a valid testing tool.

The Board disagrees, asserting that the oral examination is not only defensible, but that a low passage rate may be a good indicator of gaps in a candidates' professional education or supervised experience. The Board also notes, that the California Oral Examination is currently being reviewed by the Association of State and Provincial Psychology Boards to be used as a model to develop a national oral examination. The Board argues that eliminating the oral exam would diminish the board's ability to test for minimal competency. The result would prevent the board from carrying out its mission to protect the health, safety and welfare of the consumers of psychological services. It would be somewhat parallel to the Department of Motor Vehicles not requiring a written and practical examination prior to issuing an initial driver's license.

The oral examination has also survived challenges in the court. Civil lawsuits against the Board have occurred three times in the past four years and primarily involved issues surrounding the application process. Lawsuits were filed when the Board denied an applicant's request to waive the oral examination requirement. In one lawsuit, the applicant challenged the standards and validity of the Board's oral examination. In another instance, a libel suit was filed against a Board expert when the expert reviewed a case and found that the licensee's actions were a departure from the standard of care.

The lawsuit challenging the oral examination was dismissed when the applicant passed the Board's oral examination. However, the lawsuit regarding the standards and validity of the Board's oral examination is still in progress, and the libel suit was decided in favor of the Board.

While the Board has provided extensive documentation of its oral examination, its reliability and consistency, those who advocate elimination of the oral examination have provided substantially less documentation to bolster their case.